



FEDERAL ELECTION COMMISSION  
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 2114

DATE SCANNED 7/20/10

SCANNER NO. 2

SCAN OPERATOR ESS

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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FEDERAL ELECTION  
COMMISSION  
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March 10, 2010

MEMORANDUM

**SENSITIVE**

TO: THE COMMISSION

THROUGH: ALEC PALMER *AP*  
ACTING STAFF DIRECTOR

FROM: PATRICIA CARMONA *PC*  
CHIEF COMPLIANCE OFFICER

DEBBIE CHACONA *DC*  
ACTING ASSISTANT STAFF DIRECTOR  
REPORTS ANALYSIS DIVISION

BY: NATALIYA IOFFE/RHIANNON MAGRUDER *nmf* *Rik*  
COMPLIANCE BRANCH

SUBJECT: REASON TO BELIEVE RECOMMENDATION – 2010 12 DAY  
PRE-PRIMARY REPORT (ILLINOIS) FOR THE  
ADMINISTRATIVE FINE PROGRAM

Attached is a list of political committees and their treasurers who failed to timely file the 2010 12 Day Pre-Primary Report for the Illinois Primary Election in accordance with 2 U.S.C. § 434(a). The 12 Day Pre-Primary Report was due on January 21, 2010 and the Primary Election was held on February 2, 2010.

The committees listed on the attached RTB Circulation Report failed to file the election sensitive report by the required due date. Election sensitive reports filed more than four days prior to the election are considered late, and reports not filed more than four days prior to the election are considered not filed. In accordance with the schedule of civil money penalties for reports at 11 CFR § 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

**Recommendation**

1. Find reason to believe that the political committees and their treasurers listed on the RTB Circulation Report violated 2 U.S.C. § 434(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

Federal Election Commission  
Reason to Believe Circulation Report  
2010 PRE-PRIMARY Election Sensitive 01/21/2010 AUTH (IL)

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
2113	C00469833	CITIZENS TO ELECT ROBERT MARSHALL	MARSHALL, ROBERT ALAN	ROBERT MARSHALL	\$106,279	0	1/27/2010	6	\$10,285	\$210
2114	C00464511	FRIENDS OF DARLENA WILLIAMS BURNETT	WILLIAMS-BURNETT, DARLENA	RACHEL IVY	\$151,072	0	1/29/2010	Not Filed	\$54,055	\$3,300
2115	C00254581	GUTIERREZ FOR CONGRESS	GUTIERREZ, LUIS V.	OMAIRA GUTIERREZ	\$347,377	0	1/29/2010	Not Filed	\$6,525	\$660
2116	C00305920	JESSE JACKSON JR FOR CONGRESS	JACKSON, JESSE L. JR.	VICKIE PASLEY	\$947,690	0	1/28/2010	7	\$28,330	\$505

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
)  
Reason To Believe Recommendation - 2010 )  
12 Day Pre-Primary Report (Illinois) for the )  
Administrative Fine Program: )  
JESSE JACKSON JR FOR CONGRESS, ) AF# 2116  
and PASLEY, VICKIE as treasurer; )  
CITIZENS TO ELECT ROBERT ) AF# 2113  
MARSHALL, and ROBERT MARSHALL )  
as treasurer; )  
FRIENDS OF DARLENA WILLIAMS ) AF# 2114  
BURNETT, and RACHEL IVY as )  
treasurer; )  
GUTIERREZ FOR CONGRESS, and ) AF# 2115  
GUTIERREZ, OMAIRA as treasurer; )

**CERTIFICATION**

I, Darlene Harris, Acting Secretary of the Federal Election Commission, do hereby certify that on March 12, 2010 the Commission took the following actions on the Reason To Believe Recommendation - 2010 12 Day Pre-Primary Report (Illinois) for the Administrative Fine Program, as recommended in the Reports Analysis Division's Memorandum dated March 10, 2010, on the following committees:

AF#2116 Decided by a vote of 6-0 to: (1) find reason to believe that JESSE JACKSON JR FOR CONGRESS, and PASLEY, VICKIE as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2113 Decided by a vote of 6-0 to: (1) find reason to believe that CITIZENS TO ELECT ROBERT MARSHALL, and ROBERT MARSHALL as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2114 Decided by a vote of 6-0 to: (1) find reason to believe that FRIENDS OF DARLENA WILLIAMS BURNETT, and RACHEL IVY as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#2115 Decided by a vote of 6-0 to: (1) find reason to believe that GUTIERREZ FOR CONGRESS, and GUTIERREZ, OMAIRA as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

March 17, 2010  
Date

Darlene Harris  
Darlene Harris  
Acting Secretary of the Commission

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**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

March 18, 2010

Rachel Ivy as Treasurer  
Friends of Darlena Williams Burnett  
910 W. Van Buren St, #171  
Chicago, IL 60607

C00464511  
AF#: 2114

Dear Ms. Ivy:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a 12 Day Pre-Primary Report of Receipts and Disbursements in a calendar year during which there is a regularly scheduled election for which the candidate is seeking election, or nomination for election. This report, covering the period through January 13, 2010, shall be filed no later than January 21, 2010. 2 U.S.C. § 434(a). Because records at the Federal Election Commission ("FEC") indicate that this report was not filed prior to four (4) days before the Primary Election held on February 2, 2010, it is considered not filed for the purpose of calculating the civil money penalty.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 2 U.S.C. § 434(a). 2 U.S.C. § 437g(a)(4). On March 12, 2010, the FEC found that there is reason to believe ("RTB") that Friends of Darlena Williams Burnett and you, as treasurer, violated 2 U.S.C. 434(a) by failing to file timely this report on or before January 21, 2010. Based on the FEC's schedules of civil money penalties at 11 C.F.R. § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$3,300. Please see the attached copy of the Commission's administrative fine regulations at 11 C.F.R. §§ 111.30-11.46. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 C.F.R. § 111.34. Your payment of \$3,300 is due within forty (40) days of the finding, or by April 21, 2010, and is based on these factors:

Election Sensitivity of Report: Election Sensitive  
Level of Activity: \$64,055  
Number of Days Late: Not Filed (for the purpose of calculating the penalty only)  
Number of Previous Civil Money Penalties Assessed: 0

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At this juncture, the following courses of action are available to you:

**1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty**

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response, including the AF# found at the top of page 1 under your committee's identification number, to the FEC's Office of Administrative Review, 999 E Street, NW, Washington, DC 20463. Your response must be received within forty (40) days of the Commission's RTB finding, or April 21, 2010. 11 C.F.R. § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 C.F.R. § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 C.F.R. § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 C.F.R. § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 C.F.R. § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. district court under 2 U.S.C. § 437g. 11 C.F.R. § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

**2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge**

If you do not pay the calculated civil money penalty and do not or submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Friends of Darlena Williams Burnett and you as treasurer violated 2 U.S.C. § 434(a) and assess a civil money penalty.

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Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 C.F.R. § 111.45.

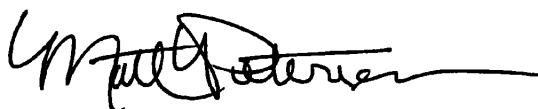
### 3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, send the enclosed remittance form, along with your payment, to the FEC at the address on page 4. Upon receipt of your payment, the FEC will send you a final determination letter.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). It will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A) until it is placed on the public record in accordance with 11 C.F.R. § 111.42, unless you notify the FEC in writing that you wish the matter to be made public.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Rhiannon Magruder in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Matthew S. Petersen  
Chairman

98115926001



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**ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS**

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the amount of your civil money penalty calculated at RTB is \$3,300 for the 2010 12 Day Pre-Primary Report.

Please mail this remittance with a check or money order made payable to the Federal Election Commission to the following address:

Federal Election Commission  
P.O. Box 979058  
St. Louis, MO 63197-9000

If you choose to send your remittance and payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox  
FEC #979058  
1005 Convention Plaza  
Attn: Government Lockbox, SL-MO-C2GL  
St. Louis, MO 63101

The remittance and your payment are due by April 21, 2010. Upon receipt of your remittance and payment, the FEC will send you a final determination letter.

**PAYMENTS BY PERSONAL CHECK**

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

**PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT**  
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FOR: Friends of Darlena Williams Burnett

FEC ID#: C00464511

AF#: 2114

PAYMENT DUE DATE: April 21, 2010

PAYMENT AMOUNT DUE: \$3,300

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**Federal Election Commission**

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penalty shall not exceed the greater of \$11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

(ii) Notwithstanding paragraph (a)(2)(i) of this section, in the case of a knowing and willful violation of 2 U.S.C. 441f, the civil penalty shall not be less than 300% of the amount of any contribution involved in the violation and shall not exceed the greater of \$55,000 or 1,000% of the amount of any contribution involved in the violation.

(b) Any Commission member or employee, or any other person, who in violation of 2 U.S.C. 437g(a)(12)(A) makes public any notification or investigation under 2 U.S.C. 437g without receiving the written consent of the person receiving such notification, or the person with respect to whom such investigation is made, shall be fined not more than \$2,200. Any such member, employee, or other person who knowingly and willfully violates this provision shall be fined not more than \$6,500.

[62 FR 11317, Mar. 12, 1997; 62 FR 18167, Apr. 14, 1997; 65 FR 31794, May 19, 2000; 67 FR 76977, Dec. 13, 2002; 70 FR 34635, June 15, 2005]

**Subpart B—Administrative Fines**

SOURCE: 65 FR 31794, May 19, 2000, unless otherwise noted.

**§ 111.30 When will subpart B apply?**

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers that relate to the reporting periods that begin on or after July 14, 2000 and end on or before December 31, 2008. This subpart, however, does not apply to reports that were due between January 1, 2004 and February 10, 2004 and that relate to reporting periods that begin and end between January 1, 2004 and February 10, 2004.

[70 FR 75718, Dec. 21, 2005]

**§ 111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?**

(a) No; §§ 111.1 through 111.8 and 111.20 through 111.24 shall apply to all compliance matters. This subpart will

apply, rather than §§ 111.9 through 111.19, when the Commission, on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, and when appropriate, determines that the compliance matter should be subject to this subpart. If the Commission determines that the violation should not be subject to this subpart, then the violation will be subject to all sections of subpart A of this part.

(b) Subpart B will apply to compliance matters resulting from a complaint filed pursuant to 11 CFR 111.4 through 111.7 if the complaint alleges a violation of 2 U.S.C. 434(a). If the complaint alleges violations of any other provision of any statute or regulation over which the Commission has jurisdiction, subpart A will apply to the alleged violations of these other provisions.

**§ 111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?**

If the Commission determines, by an affirmative vote of at least four (4) of its members, that it has reason to believe that a respondent has violated 2 U.S.C. 434(a), the Chairman or Vice-Chairman shall notify such respondent of the Commission's finding. The written notification shall set forth the following:

(a) The alleged factual and legal basis supporting the finding including the type of report that was due, the filing deadline, the actual date filed (if filed), and the number of days the report was late (if filed);

(b) The applicable schedule of penalties;

(c) The number of times the respondent has been assessed a civil money penalty under this subpart during the current two-year election cycle and the prior two-year election cycle;

(d) The amount of the proposed civil money penalty based on the schedules of penalties set forth in 11 CFR 111.43 or 111.44; and

(e) An explanation of the respondent's right to challenge both the reason to believe finding and the proposed civil money penalty.

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**§ 111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?**

The respondent must either send payment in the amount of the proposed civil money penalty pursuant to 11 CFR 111.34 or submit a written response pursuant to 11 CFR 111.35.

**§ 111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?**

(a) The respondent shall transmit payment in the amount of the civil money penalty to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) Upon receipt of the respondent's payment, the Commission shall send the respondent a final determination that the respondent has violated the statute or regulations and the amount of the civil money penalty and an acknowledgment of the respondent's payment.

**§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?**

(a) To challenge a reason to believe finding or proposed civil money penalty, the respondent must submit a written response to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) The respondent's written response must assert at least one of the following grounds for challenging the reason to believe finding or proposed civil money penalty:

(1) The Commission's reason to believe finding is based on a factual error including, but not limited to, the committee was not required to file the report, or the committee timely filed the report in accordance with 11 CFR 100.19;

(2) The Commission improperly calculated the civil money penalty; or

(3) The respondent used best efforts to file in a timely manner in that:

(i) The respondent was prevented from filing in a timely manner by reasonably unforeseen circumstances that were beyond the control of the respondent; and

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(ii) The respondent filed no later than 24 hours after the end of these circumstances.

(c) Circumstances that will be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

(1) A failure of Commission computers or Commission-provided software despite the respondent seeking technical assistance from Commission personnel and resources;

(2) A widespread disruption of information transmissions over the Internet not caused by any failure of the Commission's or respondent's computer systems or Internet service provider; and

(3) Severe weather or other disaster-related incident.

(d) Circumstances that will not be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

(1) Negligence;

(2) Delays caused by committee vendors or contractors;

(3) Illness, inexperience, or unavailability of the treasurer or other staff;

(4) Committee computer, software or Internet service provider failures;

(5) A committee's failure to know filing dates; and

(6) A committee's failure to use filing software properly.

(e) Respondent's written response must detail the factual basis supporting its challenge and include supporting documentation.

[72 FR 14667, Mar. 29, 2007]

**§ 111.36 Who will review the respondent's written response?**

(a) A reviewing officer shall review the respondent's written response. The reviewing officer shall be a person who has not been involved in the reason to believe finding.

(b) The reviewing officer shall review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer may request supplemental information from the respondent and/or the Commission staff. The respondent shall submit the supplemental information to the reviewing officer within

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a time specified by the reviewing officer. The reviewing officer will be entitled to draw an adverse inference from the failure by the respondent to submit the supplemental information.

(c) All documents required to be submitted by the respondents pursuant to this section and § 111.35 should be submitted in the form of affidavits or declarations.

(d) If the Commission staff, after the respondent files a written response pursuant to § 111.35, forwards any additional documents pertaining to the matter to the reviewing officer for his or her examination, the reviewing officer shall also furnish a copy of the document(s) to the respondents.

(e) Upon completion of the review, the reviewing officer shall forward a written recommendation to the Commission along with all documents required under this section and 11 CFR 111.32 and 111.35.

(f) The reviewing office shall also forward a copy of the recommendation to the respondent. The respondent may file with the Commission Secretary a written response to the recommendation within ten (10) days of transmittal of the recommendation. This response may not raise any arguments not raised in the respondent's original written response or not directly responsive to the reviewing officer's recommendation.

**§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?**

(a) If the Commission, after having found reason to believe and after reviewing the respondent's written response and the reviewing officer's recommendation, determines by an affirmative vote of at least four (4) of its members, that the respondent has violated 2 U.S.C. 434(a) and the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its

members, that no violation has occurred (either because the Commission had based its reason to believe finding on a factual error or because the respondent used best efforts to file in a timely manner) or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(c) The Commission will modify the proposed civil money penalty only if the respondent is able to demonstrate that the amount of the proposed civil money penalty was calculated on an incorrect basis.

(d) When the Commission makes a final determination under this section, the statement of reasons for the Commission action will, unless otherwise indicated by the Commission, consist of the reasons provided by the reviewing officer for the recommendation, if approved by the Commission, although statements setting forth additional or different reasons may also be issued. If the reviewing officer's recommendation is modified or not approved, the Commission will indicate the grounds for its action and one or more statements of reasons may be issued.

[65 FR 31794, May 19, 2000, as amended at 72 FR 14668, Mar. 29, 2007]

**§ 111.38 Can the respondent appeal the Commission's final determination?**

Yes; within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37, the respondent may submit a written petition to the district court of the United States for the district in which the respondent resides, or transacts business, requesting that the final determination be modified or set aside. The respondent's failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondent's right to present such argument in a petition to the district court under 2 U.S.C. 437g.

**§ 111.39 When must the respondent pay the civil money penalty?**

(a) If the respondent does not submit a written petition to the district court of the United States, the respondent must remit payment of the civil money

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penalty within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37.

(b) If the respondent submits a written petition to the district court of the United States and, upon the final disposition of the civil action, is required to pay a civil money penalty, the respondent shall remit payment of the civil money penalty to the Commission within thirty (30) days of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

(c) Failure to pay the civil money penalty may result in the commencement of collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A), or any other legal action deemed necessary by the Commission.

**§ 111.40 What happens if the respondent does not pay the civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?**

(a) If the Commission, after the respondent has failed to pay the civil money penalty and has failed to submit a written response, determines by an affirmative vote of at least four (4) of its members that the respondent has violated 2 U.S.C. 434(a) and determines the amount of the civil money penalty, the respondent shall be notified by letter of its final determination.

(b) The respondent shall transmit payment of the civil money penalty to the Commission within thirty (30) days of receipt of the Commission's final determination.

(c) Failure to pay the civil money penalty may result in the commencement of collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A), or any other legal action deemed necessary by the Commission.

**§ 111.41 To whom should the civil money penalty payment be made payable?**

Payment of civil money penalties shall be made in the form of a check or

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money order made payable to the Federal Election Commission.

**§ 111.42 Will the enforcement file be made available to the public?**

(a) Yes; the Commission shall make the enforcement file available to the public.

(b) If neither the Commission nor the respondent commences a civil action, the Commission shall make the enforcement file available to the public pursuant to 11 CFR 4.4(a)(3).

(c) If a civil action is commenced, the Commission shall make the enforcement file available pursuant to 11 CFR 111.20(c).

**§ 111.43 What are the schedules of penalties?**

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated as follows:

(i) For reports due before April 16, 2003:

(i) *Level of activity* means the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (a)(1)(ii) of this section.

(ii) *Estimated level of activity* means total receipts and disbursements reported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

(iii) The civil money penalty shall be calculated in accordance with the following schedule:

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If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1–24,999.99 *	$[\$100 + (\$25 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$+\$900 \times [1 + (.25 \times \text{Number of previous violations})]$
\$25,000–49,999.99	$[\$200 + (\$50 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$1800 \times [1 + (.25 \times \text{Number of previous violations})]$
\$50,000–74,999.99	$[\$300 + (\$75 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$2700 \times [1 + (.25 \times \text{Number of previous violations})]$
\$75,000–99,999.99	$[\$400 + (\$100 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$3500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$100,000–149,999.99	$[\$600 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$4500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$150,000–199,999.99	$[\$800 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$5500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$200,000–249,999.99	$[\$1,000 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$6500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$250,000–349,999.99	$[\$1500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$8000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$350,000–449,999.99	$[\$2000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$450,000–549,999.99	$[\$2500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000–649,999.99	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000–749,999.99	$[\$3500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$10,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000–849,999.99	$[\$4000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000–949,999.99	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$5000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$

\* The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(2) For reports due on or after April 16, 2003:

(i) *Level of activity* means:

(A) For an authorized committee, the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (a)(2)(ii)(A) of this section.

(B) For an unauthorized committee, the total amount of receipts and disbursements for the period covered by the late report minus the total of: transfers received from non-Federal account(s) as reported on Line 18(a) of FEC Form 3X and disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (a)(2)(ii)(B) of this section.

(ii) *Estimated level of activity* means:

(A) For an authorized committee, total receipts and disbursements re-

ported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity for an authorized committee means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

(B)(i) For an unauthorized committee, estimated level of activity is calculated as follows:  $[(\text{Total receipts and disbursements reported in the current two-year cycle}) - (\text{Transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if before March 1, 2003} + \text{Disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X})] \div \text{Number of reports filed to date covering the activity in the current two-year election cycle}.$

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(2) If the unauthorized committee has not filed a report covering activity in the current two-year election cycle, the estimated level of activity is calculated as follows: [(Total receipts and disbursements reported in the prior two-year election cycle)—(Transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if before March 1, 2003 + Disbursements

for the non-Federal Share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X)] + Number of reports filed covering the activity in the prior two-year election cycle.

(iii) The civil money penalty shall be calculated in accordance with the following schedule:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1-4,999.99 *	[\$25 + (\$5 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$250 × [1 + (.25 × Number of previous violations)]
\$5,000-9,999.99	[\$50 + (\$5 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$300 × [1 + (.25 × Number of previous violations)]
\$10,000-24,999.99	[\$100 + (\$5 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$600 × [1 + (.25 × Number of previous violations)]
\$25,000-49,999.99	[\$200 + (\$20 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$900 × [1 + (.25 × Number of previous violations)]
\$50,000-74,999.99	[\$300 + (\$75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$2700 × [1 + (.25 × Number of previous violations)]
\$75,000-99,999.99	[\$400 + (\$100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$3500 × [1 + (.25 × Number of previous violations)]
\$100,000-149,999.99	[\$600 + (\$125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$4500 × [1 + (.25 × Number of previous violations)]
\$150,000-199,999.99	[\$800 + (\$150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$5500 × [1 + (.25 × Number of previous violations)]
\$200,000-249,999.99	[\$1,000 + (\$175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$6500 × [1 + (.25 × Number of previous violations)]
\$250,000-349,999.99	[\$1500 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$8000 × [1 + (.25 × Number of previous violations)]
\$350,000-449,999.99	[\$2000 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$9000 × [1 + (.25 × Number of previous violations)]
\$450,000-549,999.99	[\$2500 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$9500 × [1 + (.25 × Number of previous violations)]
\$550,000-649,999.99	[\$3000 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$10,000 × [1 + (.25 × Number of previous violations)]
\$650,000-749,999.99	[\$3500 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$10,500 × [1 + (.25 × Number of previous violations)]
\$750,000-849,999.99	[\$4000 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$11,000 × [1 + (.25 × Number of previous violations)]
\$850,000-949,999.00	[\$4500 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$11,500 × [1 + (.25 × Number of previous violations)]
\$950,000 or over	[\$5000 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$12,000 × [1 + (.25 × Number of previous violations)]

\* The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated as follows:

(1) For reports due before April 16, 2003:

(i) *Level of activity* has the same meaning as paragraph (a)(1)(i) of this section.

(ii) *Estimated level of activity* has the same meaning as paragraph (a)(1)(ii) of this section.

(iii) The civil money penalty shall be calculated in accordance with the following schedule:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1-24,999.99 *	[\$150 + (\$25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$1000 × [1 + (.25 × Number of previous violations)]

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If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$25,000–49,999.99 .....	$[\$300 + (\$50 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$2000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$50,000–74,999.99 .....	$[\$450 + (\$75 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$3000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$75,000–99,999.99 .....	$[\$600 + (\$100 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$4000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$100,000–149,999.99 .....	$[\$800 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$5000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$150,000–199,999.99 .....	$[\$1200 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$6000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$200,000–249,999.99 .....	$[\$1500 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$7500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$250,000–349,999.99 .....	$[\$2250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$350,000–449,999.99 .....	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$450,000–549,999.99 .....	$[\$3750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000–649,999.99 .....	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000–749,999.99 .....	$[\$5250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$13,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000–849,999.99 .....	$[\$6000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$14,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000–949,999.99 .....	$[\$6750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$15,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over .....	$[\$7500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$16,000 \times [1 + (.25 \times \text{Number of previous violations})]$

\* The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(2) For reports due on or after April 16, 2003:

(i) Level of activity has the same meaning as paragraph (a)(2)(i) of this section.

(ii) *Estimated level of activity* has the same meaning as paragraph (a)(2)(ii) of this section.

(iii) The civil money penalty shall be calculated in accordance with the following schedule:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1–\$4,999.99 *	$[\$50 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$500 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$5,000–9,999.99 .....	$[\$100 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$600 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$10,000–24,999.99 .....	$[\$150 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$900 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$25,000–49,999.99 .....	$[\$300 + (\$25 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$1,400 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$50,000–74,999.99 .....	$[\$450 + (\$75 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$3000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$75,000–99,999.99 .....	$[\$600 + (\$100 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$4000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$100,000–149,999.99 .....	$[\$800 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$5000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$150,000–199,999.99 .....	$[\$1200 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$6000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$200,000–249,999.99 .....	$[\$1500 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$7500 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$250,000–349,999.99 .....	$[\$2250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$350,000–449,999.99 .....	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$450,000–549,999.99 .....	$[\$3750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$550,000–649,999.99 .....	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$650,000–749,999.99 .....	$[\$5250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$13,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .



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If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$750,000–\$49,999.99 .....	$[\$8000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$14,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$550,000–\$49,999.99 .....	$[\$6750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$15,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$950,000 or over .....	$[\$7500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$16,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .

\*The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be \$5,500.

(d) *Definitions.* For this section only, the following definitions will apply:

*Election Sensitive Reports* means third quarter reports due on October 15th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); monthly reports due October 20th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); and pre-election reports for primary, general, and special elections under 11 CFR 104.5.

*Number of previous violations* mean all prior final civil money penalties assessed under this subpart during the current two-year election cycle and the prior two-year election cycle.

(e) For purposes of the schedules of penalties in paragraphs (a) and (b) of this section,

(1) Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.

(2) Election sensitive reports are considered to be filed late if they are filed after their due dates but prior to four (4) days before the primary election for pre-primary reports, prior to four (4) days before the special election for pre-special election reports, or prior to four (4) days before the general election for all other election sensitive reports. These reports are considered to

be not filed if they are not filed prior to four (4) days before the primary election for pre-primary reports, prior to four (4) days before the special election for pre-special election reports or prior to four (4) days before the general election for all other election sensitive reports.

[65 FR 31794, May 19, 2000, as amended at 68 FR 12577, Mar. 17, 2003; 70 FR 34636, June 15, 2005]

§ 111.44 What is the schedule of penalties for 48-hour notices that are not filed or are filed late?

(a) If the respondent fails to file timely a notice regarding contribution(s) received after the 20th day but more than 48 hours before the election as required under 2 U.S.C. 434(a)(6), the civil money penalty will be calculated as follows:

(1) Civil money penalty =  $\$110 + (.10 \times \text{amount of the contribution(s) not timely reported})$ .

(2) The civil money penalty calculated in paragraph (a)(1) of this section shall be increased by twenty-five percent (25%) for each prior violation.

(b) For purposes of this section, prior violation means a civil money penalty that has been assessed against the respondent under this subpart in the current two-year election cycle or the prior two-year election cycle.

[65 FR 31794, May 19, 2000, as amended at 70 FR 34636, June 15, 2005]

§ 111.45 What actions will be taken to collect unpaid civil money penalties?

The Commission may take any and all appropriate collection actions authorized and required by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 et. seq.). The U.S.

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Department of the Treasury regulations at 31 CFR 285.2, 285.4, and 285.7 and the Federal Claims Collection Standards issued jointly by the Department of Justice and the U.S. Department of the Treasury at 31 CFR parts 900 through 904 also apply.

[65 FR 31794, May 19, 2000, as amended at 68 FR 12580, Mar. 17, 2003; 68 FR 16715, Apr. 7, 2003]

### § 111.46 How will the respondent be notified of actions taken by the Commission and the reviewing officer?

If a statement designating counsel has been filed in accordance with 11 CFR 111.23, all notifications and other communications to a respondent provided for in subpart B of this part will be sent to designated counsel. If a statement designating counsel has not been filed, all notifications and other communications to a respondent provided for in subpart B of this part will be sent to respondent political committee and its treasurer at the political committee's address as listed in the most recent Statement of Organization, or amendment thereto, filed with the Commission in accordance with 11 CFR 102.2.

[68 FR 12580, Mar. 17, 2003]

## PART 112—ADVISORY OPINIONS (2 U.S.C. 437f)

### Sec.

- 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).
- 112.2 Public availability of requests (2 U.S.C. 437f(d)).
- 112.3 Written comments on requests (2 U.S.C. 437f(d)).
- 112.4 Issuance of advisory opinions (2 U.S.C. 437f (a) and (b)).
- 112.5 Reliance on advisory opinions (2 U.S.C. 437f(c)).
- 112.6 Reconsideration of advisory opinions.

AUTHORITY: 2 U.S.C. 437f, 438(a)(8).

SOURCE: 45 FR 15123, Mar. 7, 1980, unless otherwise noted.

### § 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).

(a) Any person may request in writing an advisory opinion concerning the application of the Act, chapters 95 or 96 of the Internal Revenue Code of 1954, or

any regulation prescribed by the Commission. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.

(b) The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

(c) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(d) The Office of General Counsel shall review all requests for advisory opinions submitted under 11 CFR 112.1. If the Office of General Counsel determines that a request for an advisory opinion is incomplete or otherwise not qualified under 11 CFR 112.1, it shall, within 10 calendar days of receipt of such request, notify the requesting person and specify the deficiencies in the request.

(e) Advisory opinion requests should be sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(f) Upon receipt by the Commission, each request which qualifies as an advisory opinion request (AOR) under 11 CFR 112.1 shall be assigned an AOR number for reference purposes.

[45 FR 15123, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

### § 112.2 Public availability of requests (2 U.S.C. 437f(d)).

(a) Advisory opinion requests which qualify under 11 CFR 112.1 shall be made public at the Commission promptly upon their receipt.

(b) A copy of the original request and any supplements thereto, shall be available for public inspection and purchase at the Public Disclosure Division of the Commission.

**FEC OFFICE OF  
ADMIN REVIEW**

**2010 APR 22 P 12:16**

**Friends of Darlena W. Burnett**

910 W. Van Buren

Chicago, IL 60607

Phone: 773-454-6016

E-Mail: rivyaka@sbcglobal.net Web: www.Burnett4Congress.com

April 20, 2010

**FEC'S OFFICE OF ADMINISTRATIVE REVIEW**

**999 E. STREET**

**NW, Washington, DC 20463**

**Dear Ms. Magruder:**

I am in receipt of the letter from the Federal Election Committee AF#2114 stating that the Friends of Darlena W. Burnett (C00464511) campaign violated the reporting requirements of 2 U.S.C. 434(a). We would like to challenge this RTB finding stating that the committee did file the report. Based on the grounds that we used our best efforts to file the report in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond my control. First I would like to state that the report was filed on January 29, 2010. The report was deemed late because I was unable to get my new password for my electronic filing to work and I obtained a validation error that could not be corrected without technical assistance. I did call the commission for technical assistance and was unable to receive help at the time. I was told to leave a voicemail and someone would contact me. Someone did contact me and I was able to clear the error and file. However, I was only able to file after faxing over a letter requesting a new password from Stephanie the password Administrator.

The intent of our committee in no way was to intentionally violated the reporting practices of the federal election committee. It would be greatly appreciated if you could reconsider this violation finding because our committee is committed to being in good standing with the FEC. If you have any further questions please don't hesitate to contact me at 773-454-6016.

Sincerely,

Rachel Ivy  
Treasurer

**Paid For By Friends of Darlena W Burnett Committee**

# Friends of Darlena W. Burnett

910 W. Van Buren

Chicago, IL 60607

Phone: 773-454-6016

E-Mail: rivyaka@sbcglobal.net Web: www.Burnett4Congress.com

**Password Administrator:**

This letter is an official request for another password for the Friends of Darlena Burnett campaign committee (c00464511). My name is Rachel Ivy and I can be reached via my cell phone at 773-454-6016. I look forward to hearing from you.

Rachel Ivy Stephanie 202-694-1642ext3

*Rachel Ivy*

Treasurer

Paid For By Friends of Darlena W Burnett Committee

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Via First Class Mail

April 23, 2010

Rachel Ivy, in her official capacity as Treasurer  
Friends of Darlena Williams Burnett  
910 W. Van Buren Street #171  
Chicago, Illinois 60607

C00464511  
AF# 2114

Dear Ms. Ivy:

On April 22, 2010, the Commission received your written response ("challenge") which is being reviewed by the Office of Administrative Review. If you have any questions regarding your challenge, please contact this Office on our toll free number (800)424-9530 (press 0, then ext. 1660) or (202)694-1660.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen Benitz", is written over the typed name.

Maureen Benitz  
Reviewing Analyst  
Office of Administrative Review

10092651199

**FEC OFFICE OF  
ADMIN REVIEW**

**2010 APR 23 P 1: 46**

**Date: April 23, 2010**

**REFERRAL TO OFFICE OF ADMINISTRATIVE REVIEW  
CHALLENGE RECEIVED**

**AF#: 2114**

**Committee Name: Friends of Darlena Williams Burnett**

**Committee ID#: C00464511**

**Committee Address (if different than in RTB letter): N/A**

**Treasurer Name (if different than in RTB finding): N/A**

**Attachments:**

**Copy of RTB Circulation Report, dated March 10, 2010 and RTB Certification,  
dated March 17, 2010: Y**

**Attachment #: 1**

**Signature Proof of Delivery (Y/N): Y**

**Attachment #: 2**

**Other Relevant Telecoms (Y/N): N**

**Attachment #: N/A**

**Original Correspondence Received by RAD in Response to RTB Letter (Y/N): N**

**Attachment #: N/A**

**RAD Staff Declaration (Y/N): Y**

**-2010 Pre-Primary Report Prior Notice, dated December 28, 2009.**

**-Non-Filer Letter, dated January 22, 2010.**

**-RTB Letter, dated March 18, 2010.**

**Attachment #: 4**

**Other RAD Information: (Y/N): RTB Fax Transmittals (3)**

**Attachment#: 5**

10092651200



FedEx Express  
Customer Support Trace  
3875 Airways Boulevard  
Module H, 4th Floor  
Memphis, TN 38116

U.S. Mail: PO Box 727  
Memphis, TN 38194-4643  
Telephone: 901-369-3600

April 5, 2010

Dear Customer:

The following is the proof-of-delivery for tracking number **402983359943**.

---

**Delivery Information:**

<b>Status:</b>	Delivered	<b>Delivery location:</b>	CHICAGO, IL
<b>Signed for by:</b>	M.ZITO	<b>Delivery date:</b>	Mar 19, 2010 09:59
<b>Service type:</b>	Priority Envelope		



---

**Shipping Information:**

<b>Tracking number:</b>	402983359943	<b>Ship date:</b>	Mar 18, 2010
		<b>Weight:</b>	0.5 lbs/0.2 kg

**Recipient:**  
CHICAGO, IL US

**Shipper:**  
WASHINGTON, DC US

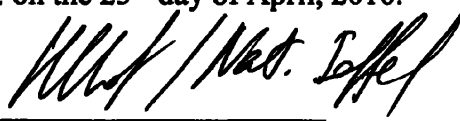
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1.800.GoFedEx 1.800.463.3339

## DECLARATION OF NATALIYA IOFFE

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission ("Commission"). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Friends of Darlena Williams Burnett:
  - A) Prior Notice, dated December 28, 2009, referencing the 2010 12 Day Pre-Primary Report (sent via electronic mail to: [info@darlenaburnett.org](mailto:info@darlenaburnett.org));
  - B) Non-Filer Letter, dated January 22, 2010, referencing the 2010 12 Day Pre-Primary Report;
  - C) Reason-to-Believe Letter, dated March 18, 2010, referencing the 2010 12 Day Pre-Primary Report.
3. I hereby certify that I have searched the Commission's public records and find that Friends of Darlena Williams Burnett filed the 2010 12 Day Pre-Primary Report with the Commission on January 29, 2010.
4. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided.

This declaration was executed at Washington, D.C. on the 23<sup>rd</sup> day of April, 2010.

  
\_\_\_\_\_  
Nataliya Ioffe  
Chief, Compliance Branch  
Reports Analysis Division  
Federal Election Commission





# PRIMARY ELECTION REPORT NOTICE

FEDERAL ELECTION COMMISSION

ILLINOIS

December 28, 2009

## POLITICAL COMMITTEES INVOLVED IN THE PRIMARY (02/02/10):

REPORT	REPORTING PERIOD	REG./CERT. & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
Pre-Primary	01/01/10 - 01/13/10	01/18/10 <sup>2</sup>	01/21/10 <sup>3</sup>
48-Hour Notices	01/14/10 - 01/30/10	-- IL primary candidates only -- see filing info --	
April Quarterly	01/14/10 - 03/31/10	04/15/10	04/15/10

## WHO MUST FILE

The following committees must file the Illinois Pre-Primary Report:

- **Principal campaign committees** of congressional candidates (including unopposed candidates and candidates whose names do not appear on the ballot) who seek election in the primary election must file the above reports and notices.
- **PACs and party committees** filing on a quarterly basis in 2010 are subject to pre-election reporting if they make previously undisclosed contributions or expenditures (including independent expenditures) in connection with an election by the close of books of the applicable report(s).

Supplemental Filing Information is available:

- **Congressional Committees**
- **Parties and PACs**

**Additional information for Illinois Campaign Committees -- click here**

<sup>1</sup> These dates indicate the beginning and end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

<sup>2</sup> Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

<sup>3</sup> As an alternative, committees may file a consolidated Year-End/IL Pre-Primary Report covering 10/01/09 - 01/13/10 by January 21, 2010.

**Note for PACs & Parties:** Since disclosing financial activity from two different calendar years on one report would conflict with the calendar year aggregation requirements for unauthorized committees, PACs and parties filing the consolidated report are to do so on separate forms--the form disclosing 2009 activity labeled as the "Year-End Report;" the other, covering only 2010 activity, as the "Pre-Primary Report."

## 2010 SUPPLEMENTAL FILING INFORMATION CONGRESSIONAL COMMITTEES

**PLEASE NOTE:** The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

### WHO MUST FILE

Principal campaign committees of congressional candidates <sup>1</sup> (including unopposed candidates and candidates whose names do not appear on the ballot) must file Quarterly Reports in 2010. <sup>2</sup>

Campaigns that raise or spend more than \$5,000 for the 2010 election cycle (and thus trigger registration and reporting requirements) must file quarterly reports throughout 2010, even if the candidate plans to retire, withdraws from the race prior to the primary election, loses the primary or drops out of the race prior to the general election. See 11 CFR 104.5(a)(2).

Before a committee can stop filing with the FEC, it must file a termination report with the Commission. See 11 CFR 102.3. Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

### METHODS OF FILING REPORTS

#### Electronic Filing

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing deadline. See 11 CFR 104.5(e).

- Web Page: Electronic Filing Page
- Campaign Guide for Congressional Candidates and Committees (Candidate Guide), pp. 82-84 [PDF]

#### Paper Filing - Meeting the Filing Deadline

Paper Report filing options -- Registered, Certified or Overnight or First Class Mail. See 11 CFR 104.5(c).

- Web Page: Link to Paper Forms (for downloading and printing)
- Candidate Guide, p. 81 [PDF]

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<sup>1</sup> Generally, an individual becomes a candidate for federal office (and thus triggers registration and reporting obligations) when his or her campaign exceeds \$5,000 in either contributions or expenditures. If the campaign has not crossed the \$5,000 threshold, it is not required to file reports. See 11 CFR 100.3(a).

<sup>2</sup> If a candidate has more than one authorized committee, the principal campaign committee must also file a consolidated report on Form 3Z [PDF].

## PRE- AND POST-ELECTION REPORTS

A committee whose candidate participates in a 2010 state primary, nominating convention or runoff election -- even if unopposed -- must also file a pre-election report 12 days prior to the primary, nominating convention or runoff. The campaign committee of a candidate who participates in the general election must file pre- and post-general election reports.

See 11 CFR 104.5(a)(2).

- Web Page: 2010 Congressional Pre-Primary Reporting Dates
- The *Record*: January 2010 issue – coming soon
- Candidate Guide, pp. 79-80 [PDF]

## COMPLIANCE

### Treasurer Responsibility

Committee Treasurers are responsible for both the timeliness and the accuracy of all reports. They may be subject to monetary penalties if reports are inaccurate or are not filed on time.

See 11 CFR 104.14(d).

- Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings [PDF]
- Candidate Guide, p. 7 [PDF]

### Administrative Fine Program

Political committees and their treasurers who fail to file their reports on time may be subject to civil money penalties up to \$17,600 (or more for repeat late- and non-filers).<sup>3</sup>

See 11 CFR 111.30.

- Web Page: Administrative Fine Program
- Candidate Guide, pp. 81-82 [PDF]

## IMPORTANT FILING INFORMATION - PAPER FILERS

In response to the 2001 anthrax threat, the U.S. Postal Service is irradiating mail directed to many federal agencies, including the FEC and the Secretary of the Senate.<sup>4</sup> This process has not only delayed mail delivery, it has also damaged and in some cases destroyed pieces of mail. As a result, committees that file reports with the FEC may want to consider submitting their reports by some means other than U.S. mail. Alternative methods include electronic filing, overnight mail or delivery service, and hand delivery.

## 2010 REPORTING SCHEDULE

- Web Page: 2010 Reporting Dates Page
- The *Record*: January 2010 issue – coming soon
- Candidate Guide, p. 79 [PDF]

<sup>3</sup> Penalties for late- or non-filing of 48-hour notices are based on the amount of contributions not timely disclosed. As a result, these penalties may exceed \$17,600, even for first-time violations.

<sup>4</sup> Senate committees should contact the Secretary of the Senate at (202) 224-0322 for more information on filing reports via US mail.

## DISCLOSURE OF LOBBYIST BUNDLING ACTIVITY

Campaign committees must file FEC Form 3L [PDF] if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the applicable reporting period (see page 1 of this notice). See 11 CFR 104.22.

**NOTE:** The lobbyist bundling disclosure threshold for calendar year 2009 was \$16,000. This threshold amount may increase in 2010 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the Federal Register and post it on its website. See 11 CFR 110.17(e).

- The Record: March 2009 issue [PDF]
- Federal Register: Notice 2009-03 (February 17, 2009) [PDF]

## SUPPLEMENTAL FILING INFORMATION ILLINOIS CAMPAIGN COMMITTEES ONLY

### 48 HOUR NOTICES ON CONTRIBUTIONS

Notices are required if the committee receives any contribution (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee) of \$1,000 or more per source, during the period of January 13 through January 30, 2010.

The notices must reach the appropriate federal filing office within 48 hours of the committee's receipt of the contribution(s). Campaign committees that file electronically **MUST submit their 48-hour notices electronically**. See 11 CFR 104.5(f).

- Web Page: Link to Paper Forms (for downloading and printing)
- Form 6 Fax numbers
  - Senate campaigns (Secretary of the Senate): (202) 224-1851
  - House Campaigns (FEC): (202) 219-0174
- Campaign Guide: Candidate, p. 80 [PDF].

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FOR INFORMATION, CALL: (800) 424-9530 or (202) 694-1100

## 2010 SUPPLEMENTAL FILING INFORMATION PACs AND PARTY COMMITTEES

**PLEASE NOTE:** The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

### WHO MUST FILE

All Party Committees and PACs (Nonconnected Committees and Separate Segregated Funds) must file either quarterly or monthly reports in 2010. See 11 CFR 104.5(c). Before a committee can stop filing with the FEC, it must file a termination report with the Commission. See 11 CFR 102.3. Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

### METHODS OF FILING REPORTS

#### Electronic Filing

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing deadline. See 11 CFR 104.5(e).

- Web Page: Electronic Filing Page
- Campaign Guide: Nonconnected Committees (Nonconnected), pp. 51-53 [PDF]; Corporations and Labor Organizations (SSF), pp. 49-51 [PDF]; Political Party Committees (Party), pp. 69-71 [PDF].

#### Paper Filing – Meeting the Filing Deadline

Paper report filing options – Registered, Certified or Overnight or First Class Mail. See 11 CFR 104.5(e).

- Web Page: Link to Paper Forms (for downloading and printing)
- Campaign Guide: Nonconnected, pp. 47-48 [PDF]; SSF, pp. 45-46 [PDF]; Party, p. 65 [PDF].

### PRE-ELECTION REPORTING

Quarterly filing committees that make contributions or expenditures (including independent expenditures) in connection with an election must also file a Pre-Election Report, if the activity was not previously reported. See 11 CFR 104.5(c)(1)(ii).

- Web Page: 2010 Congressional Pre-Primary Reporting Dates Page
- The *Record*: January 2010 issue – coming soon
- Campaign Guide: Nonconnected, pp. 49-51 [PDF]; SSF, pp. 46-48 [PDF]; Party, pp. 67-68 [PDF].

### 2010 REPORTING SCHEDULE

- Web Page: 2010 Reporting Dates Page
- The *Record*: January 2010 issue – coming soon
- Campaign Guide: Nonconnected, pp. 49-51 [PDF]; SSF, pp. 46-48 [PDF]; Party, pp. 67-68 [PDF].

## COMPLIANCE

### Treasurer Responsibility

Committee treasurers are responsible for both the timeliness and the accuracy of all reports. They may be subject to monetary penalties if reports are inaccurate or are not filed on time.

See 11 CFR 104.14(d).

- Statement of Policy Regarding Treasurers Subject to Enforcement Proceeding [PDF]
- Campaign Guide: Nonconnected, pp. 3-4 [PDF]; SSF, pp. 1-2 [PDF]; Party, pp. 6-7 [PDF].

### Administrative Fine Program

Failure to file reports on time may be subject to civil money penalties up to \$17,600 (or more for repeat late- or non-filers). See 11 CFR 111.30.

- Web Page: Administrative Fine Program Page
- Campaign Guide: Nonconnected, pp. 48-49 [PDF]; SSF, p. 46 [PDF]; Party, p. 66 [PDF]

## DISCLOSURE OF LOBBYIST BUNDLING ACTIVITY

Party committees and Leadership PACs must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the covered period (see page 1 of this notice). See 11 CFR 104.22.

NOTE: The lobbyist bundling disclosure threshold for calendar year 2009 was \$16,000. This threshold amount may increase in 2010 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the Federal Register and post it on its website. See 11 CFR 110.17(e).

- The Record: March 2009 issue [PDF]
- Federal Register: Notice 2009-03 (February 17, 2009) [PDF]
- Campaign Guide: Party, pp. 143-149 [PDF]

## CHANGE IN FILING FREQUENCY

Committees able to change their reporting schedule (for example, from monthly to quarterly) who wish to do so must notify the Commission in writing and may change their filing frequency no more than once per calendar year. See 11 CFR 104.5(c).

- Web Page: Filing Frequency by Type of Committee
- Campaign Guide: Nonconnected, p. 51 [PDF]; SSF, p. 49 [PDF]; Party, p. 67 [PDF].

## 48- AND 24-HOUR REPORTS OF INDEPENDENT EXPENDITURES

Any PAC or Party Committee that makes independent expenditures in 2010 may have to disclose this activity within 48- or 24-hours based upon the date and amount of the expenditure.

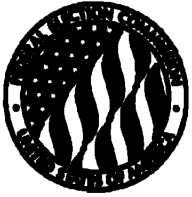
See 11 CFR 104.4.

- Web Page: 48- and 24-hour reporting periods for independent expenditures for 2010 elections
- Campaign Guide: Nonconnected, pp. 72-74 [PDF]; SSF, pp. 65-67 [PDF]; Party, pp. 87-89 [PDF].

These reports are not required when a PAC or Party Committee makes a contribution directly to a candidate.

---

FOR INFORMATION, CALL: (800) 424-9530 or (202) 694-1100



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 22, 2010

RQ-7

RACHEL IVY, TREASURER  
FRIENDS OF DARLENA WILLIAMS BURNETT  
910 W VAN BUREN ST #171  
CHICAGO, IL 60607

IDENTIFICATION NUMBER: C00464511

REFERENCE: PRE-PRIMARY REPORT 1/1/2010 - 1/13/2010

DEAR TREASURER:

IT HAS COME TO THE ATTENTION OF THE FEDERAL ELECTION COMMISSION THAT YOU MAY HAVE FAILED TO FILE THE ABOVE REFERENCED REPORT OF RECEIPTS AND EXPENDITURES AS REQUIRED BY THE FEDERAL ELECTION CAMPAIGN ACT, AS AMENDED.

YOU WILL BE ALLOWED FOUR (4) BUSINESS DAYS FROM THE DATE OF THIS NOTICE TO FILE THIS REPORT TO AVOID PUBLICATION.

THE REPORT MUST BE FILED WITH THE FEDERAL ELECTION COMMISSION, 999 E STREET, N.W., WASHINGTON, D.C. 20463 FOR HOUSE CANDIDATES, OR THE SECRETARY OF THE SENATE, 232 HART SENATE OFFICE BUILDING, WASHINGTON, D.C. 20510 (MAILING ADDRESS: OFFICE OF PUBLIC RECORDS, P.O. BOX 2517, ALEXANDRIA, VA 22301), FOR SENATE CANDIDATES. PLEASE NOTE THAT ELECTRONIC FILERS MUST SUBMIT THEIR REPORTS ELECTRONICALLY, AS PER 11 CFR §104.18. A COPY OF THE REPORT MUST ALSO BE FILED WITH THE SECRETARY OF STATE OR EQUIVALENT STATE OFFICER UNLESS THE STATE IS EXEMPT FROM THE FEDERAL REQUIREMENT TO RECEIVE AND MAINTAIN PAPER COPIES. IF YOU HAVE FILED THE REPORT TIMELY BY EXPRESS, CERTIFIED OR REGISTERED MAIL, PLEASE NOTIFY US IMMEDIATELY OF THE CERTIFIED, REGISTERED OR TRACKING NUMBER AND THE DATE THAT THE REPORT WAS SENT.

IN ADDITION, THE FAILURE TO TIMELY FILE THIS REPORT MAY RESULT IN CIVIL MONEY PENALTIES, AN AUDIT OR OTHER LEGAL ENFORCEMENT ACTION. THE CIVIL MONEY PENALTY CALCULATION FOR LATE REPORTS DOES NOT INCLUDE A GRACE PERIOD AND BEGINS ON THE DAY FOLLOWING THE DUE DATE FOR THE REPORT.

IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER, PLEASE CONTACT CHRISTOPHER RITCHIE IN THE REPORTS ANALYSIS DIVISION ON OUR TOLL FREE NUMBER (800)424-9530. OUR LOCAL NUMBER IS (202)694-1130.

SINCERELY,

PATRICIA CARMONA  
ASSISTANT STAFF DIRECTOR  
REPORTS ANALYSIS DIVISION (RAD)

1003022020992651209



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2010 MAY -7 A 9 01

**SENSITIVE**

May 6, 2010

**MEMORANDUM**

To: The Commission

Through: Alec Palmer  
Acting Staff Director *AP*

From: Patricia Carmona *PC*  
Chief Compliance Officer

Shawn Woodhead Wertz *SWW*  
Reviewing Officer  
Office of Administrative Review

By: Maureen Benitz *MB*  
Reviewing Analyst

Subject: Reviewing Officer Recommendation in AF# 2114-Friends of  
Darlena Williams Burnett and Rachel Ivy, in her official capacity  
as Treasurer (C00464511)

The attached Reviewing Officer Recommendation is being circulated on an informational basis. A copy was also sent to the respondents in accordance with 11 C.F.R. § 111.36(f). The respondents may file with the Commission Secretary a written response within 10 days of transmittal of the recommendation.

After the 10 day period, the Reviewing Officer Recommendation and the respondents' written response, if any, will be circulated to the Commission to make a final determination.

Attachment

10092651210





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

May 6, 2010

**REVIEWING OFFICER RECOMMENDATION  
OFFICE OF ADMINISTRATIVE REVIEW ("OAR")**

AF# 2114 – Friends of Darlena Williams Burnett and Rachel Ivy, in her official capacity  
as Treasurer (C00464511)

**Summary of Recommendation**

Make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a \$3,300 civil money penalty.

**Reason-to-Believe Background**

On March 12, 2010, the Commission found reason to believe ("RTB") that the respondents violated 2 U.S.C. § 434(a) for failing to file the 12 Day Pre-Primary Report and made a preliminary determination that the civil money penalty was \$3,300, based on the schedule of penalties at 11 C.F.R. § 111.43. They were notified by the Reports Analysis Division ("RAD") on March 18, 2010 of the Commission's RTB finding and civil money penalty. Because the original RTB letter was not received by the Committee, RAD sent, by facsimile, a copy of the RTB letter on April 19 and twice on April 21, 2010.

**Legal Requirements**

The Federal Election Campaign Act ("Act") states that the treasurer of a principal campaign committee shall file a report no later than the 12th day before any election in which the candidate is seeking election, or nomination for election. 2 U.S.C. § 434(a)(2)(A)(i) and 11 C.F.R. § 104.5(a)(2)(i). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

The 12 Day Pre-Primary Report for candidates seeking election in the state of Illinois is due by January 21, 2010. The respondents filed the 12 Day Pre-Primary Report on January 29, 2010. The 12 Day Pre-Primary Report is an election sensitive report. 11 C.F.R. § 111.43(d)(i). An election sensitive report that is not filed prior to four days before the election (in this case, February 2) is considered not filed for the purpose of the civil money penalty calculation. 11 C.F.R. § 111.43(e)(2).

**Respondents' Challenge and Analysis**

On April 22, 2010, the Commission received the written response ("challenge") from Rachel Ivy. The respondents assert that they did file the report and that they used best efforts to file the report on time, but were prevented from filing due to a problem with their electronic filing password request. The respondents state that they received a

validation error that could only be corrected with the assistance of technical support. They also state that they had to leave a voicemail for technical support to help with the validation error. Lastly, they say that the report could only be uploaded once they submitted a new password request form. They ask that the Commission reconsider this violation because they never intended to intentionally violate the Commission's reporting practices and are committed to being in good standing with the FEC.

EFO records indicate that on January 22, 2010 (the day after the filing deadline), the EFO sent the 12-hour non-filer email notification to ' ' alerting them that they did not file the 2010 12 Day Pre-Primary Report. This is the email address provided by the respondents.

The respondents state that they tried to file on time but could not because of a problem with the electronic filing password. However, Commission records indicate that the respondents did not attempt to file the report, or to obtain a new password, until January 29, 2010, eight days after the due date of the report. On January 29, after receiving a non-filer notice, Rachel Ivy called her Reports Analysis Division ("RAD") Analyst. The Analyst suggested that she file the missing report as soon as possible, and to amend her Statement of Organization to provide an email address that she has access to in order to prevent missing future emails regarding reporting dates. On that same date, the Treasurer called the Electronic Filing Office ("EFO") to request a new password. A new password was supplied that day.

EFO telephone records show that, on the same day (January 29, 2010), the respondents left a message for the EFO asking for technical assistance in uploading a report. The following day (January 30, 2010), EFO staff returned the call. At that time, the respondents told the EFO staff that they had figured out a way to resolve the problem and uploaded the report. It appears that once the respondents received the new password, they were successfully able to upload the report.

The administrative fine regulations specifically state that failure to use filing software properly and failure to know filing dates are not reasonably unforeseen circumstances. 11 C.F.R. § 111.35(d). Their challenge fails to address any of the three valid excuses at 11 C.F.R. § 111.35(b). These are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control and they filed the report no later than 24 hours after the end of these circumstances.

Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$3,300.

### **OAR Recommendations**

- (1) Adopt the Reviewing Officer recommendation for AF# 2114 involving Friends of Darlena Williams Burnett and Rachel Ivy, in her official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 2114 involving Friends of Darlena Williams Burnett and Rachel Ivy, in her official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$3,300; and
- (3) Send the appropriate letter.

Reviewing Analyst: Maureen Benitz

### **Attachments**

Attachment 1 – Challenge Received from Respondents

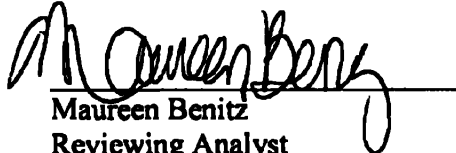
Attachment 2 –

Attachment 3 – Declaration from RAD,

Attachment 4 – Declaration from OAR

**DECLARATION OF MAUREEN BENITZ**

- 1) I am the Reviewing Analyst in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Analyst, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) The 2010 12 Day Pre-Primary Report for the Illinois Primary is due January 21, 2010. If electronically filed, it must be received and validated by the Commission at or before 11:59 p.m., Eastern Standard/Daylight Time on January 21 to be timely filed.
- 3) I hereby certify that I have searched the Commission's public records and that the document identified herein is the true and accurate copy of Page 1 of the Summary Page for the 2010 12 Day Pre-Primary Report electronically filed by Friends of Darlena W Burnett and Rachel Ann Ivy, as Treasurer. According to Commission records, the report covers the period from January 1 through January 13, 2010 and the report was received on January 29, 2010.
- 4) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington on the 6th of May, 2010.

  
Maureen Benitz  
Reviewing Analyst  
Office of Administrative Review  
Federal Election Commission

10092651214

**FEC  
FORM 3****REPORT OF RECEIPTS  
AND DISBURSEMENTS**

For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) **USE FEC MAILING LABEL OR TYPE OR PRINT** Example: If typing, type over the lines

Friends of Darlena W Burnett

ADDRESS (number and street)

910 W. Van Buren

Box 171

Check if different  
than previously  
reported. (ACC)

Chicago

IL

60607

2. FEC IDENTIFICATION NUMBER

C00464511

CITY

STATE

ZIP CODE

STATE DISTRICT

3. IS THIS REPORT ☒ NEW (N) OR ☐ AMENDED (A)

IL 07

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:

April 15 Quarterly Report (Q1)

July 15 Quarterly Report (Q2)

October 15 Quarterly Report (Q3)

January 31 Year-End Report (YE)

Termination Report (TER)

- (b) 12-Day PRE-Election Report for the:

☒ Primary (12P) General (12G) Runoff (12R)  
Convention (12C) Special (12S)

Election on 02 02 2010 in the State of IL

- (c) 30-Day POST-Election Report for the:

General (30G) Runoff (30R) Special (30S)

Election on in the State of

5. Covering Period 01 01 2010 through 01 13 2010

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Ms Rachel Ann Ivy

Signature of Treasurer Electronically Filed by Ms Rachel Ann Ivy Date 01 29 2010

NOTE : Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C 437g.

Office  
Use  
Only**FEC FORM 3**  
(Revised 02/2003)



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA OVERNIGHT DELIVERY

May 10, 2010

Rachel Ivy, in her official as Treasurer  
Friends Of Darlena Williams Burnett  
910 W Van Buren St #171  
Chicago, IL 60607

C00464511  
AF# 2114

Dear Ms. Ivy:

On March 12, 2010, the Federal Election Commission ("Commission") found reason to believe ("RTB") that Friends of Darlena Williams Burnett and you, in your official capacity as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2010 12 Day Pre-Primary Report. The Commission also made a preliminary determination that the civil money penalty was \$3,300 based on the schedule of penalties at 11 C.F.R. § 111.43.

After reviewing the written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination in this matter. A copy of the Reviewing Officer's recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Your written response should be sent to the Commission Secretary, 999 E Street, NW, Washington, DC 20463. As a result of the anthrax threat in the Washington, DC area, US Postal Service mail delivery to federal agencies, including the Commission, has been interrupted. Until regular mail delivery resumes, you may also file your written response with the Commission Secretary via facsimile (202-208-3333) or by courier at the same address (if you use an overnight delivery service, please use zip code 20004 instead of zip code 20463). Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1660 if you have any questions.

Sincerely,

Maureen Benitz  
Reviewing Analyst  
Office of Administrative Review

Attachment

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2010 JUN -2 P 1:07

June 2, 2010

**SENSITIVE**

**MEMORANDUM**

To: The Commission

Through: Alec Palmer  
Acting Staff Director *AP*

From: Patricia Carmona *PC*  
Chief Compliance Officer

Shawn Woodhead Wertz *SW*  
Reviewing Officer  
Office of Administrative Review

By: Maureen Benitz  
Reviewing Analyst *MB*

Subject: Final Determination Recommendation in AF# 2114 - Friends of Darlena Williams Burnett and Rachel Ivy, in her official capacity as Treasurer (C00464511)

On March 12, 2010, the Commission found reason to believe ("RTB") that the respondents violated 2 U.S.C. § 434(a) for failure to file the 2010 12 Day Pre-Primary Report. As a result, on March 12, 2010, the Commission also made a preliminary determination that the civil money penalty was \$3,300 based on the schedule of penalties at 11 C.F.R. § 111.43.

On April 22, 2010, the Commission received their written response ("challenge"). After reviewing the challenge, the Reviewing Officer's recommendation dated May 6, 2010 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer recommended that the Commission make a final determination that they violated 2 U.S.C. § 434(a) and assess a \$3,300 civil money penalty because they submitted no evidence that a factual error was made in the RTB finding, that the penalty was miscalculated at RTB or that they used best efforts to file on time. 11 C.F.R. § 111.35(b).

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in the respondents' challenge or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). To date, no response has been received.

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### **OAR Recommendations**

- (1) Adopt the Reviewing Officer recommendation for AF# 2114 involving Friends of Darlena Williams Burnett and Rachel Ivy, in her official capacity as Treasurer, in making the final determination;**
- (2) Make a final determination in AF# 2114 that Friends of Darlena Williams Burnett and Rachel Ivy, in her official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$3,300; and**
- (3) Send the appropriate letter.**



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Final Determination Recommendation: ) AF 2114  
Friends of Darlena Williams Burnett and )  
Rachel Ivy, in her official capacity as )  
Treasurer (C00464511) )

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on June 18, 2010, the Commission decided by a vote of 4-0 to take the following actions in AF 2114:

1. Adopt the Reviewing Officer recommendation for AF 2114 involving Friends of Darlena Williams Burnett and Rachel Ivy, in her official capacity as Treasurer, in making the final determination.
2. Make a final determination in AF 2114 that Friends of Darlena Williams Burnett and Rachel Ivy, in her official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$3,300.
3. Send the appropriate letter.

Commissioners Bauerly, Hunter, Walther, and Weintraub voted affirmatively for the decision. Commissioners McGahn II and Petersen did not vote.

Attest:

June 18, 2010  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 24, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Rachel Ivy, in her official capacity as Treasurer  
Friends of Darlena Williams Burnett  
910 W Van Buren St #171  
Chicago, IL 60607

C00464511  
AF# 2114

Dear Ms. Ivy:

On March 12, 2010, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Friends of Darlena Williams Burnett and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) for failing to file the 2010 12 Day Pre-Primary Report. By letter dated March 18, 2010, the Commission sent you notification of the RTB finding that included a civil money penalty calculated at RTB of \$3,300 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On April 22, 2010, the Office of Administrative Review received the written response from you, in your official capacity as Treasurer, challenging the RTB finding.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and the written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Friends of Darlena Williams Burnett and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty in the amount of \$3,300 in accordance with 11 C.F.R. § 111.43. The basis for the Reviewing Officer's recommendation was included in the Final Determination Report, a copy of which was sent to you on May 10, 2010.

On June 18, 2010, the Commission adopted the Reviewing Officer's recommendation and made a final determination that Friends of Darlena Williams Burnett and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assessed a civil money penalty of \$3,300. It is based on the same factors used to calculate the civil money penalty at RTB. A copy of the final determination recommendation is attached.

The \$3,300 payment for the civil money penalty was received on June 22, 2010.

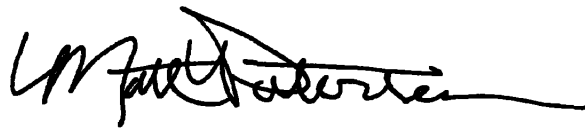
The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. The file will be made a part of the public record pursuant to 11 C.F.R. § 111.42(b). Although the file must be placed on the public record within 30 days

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from the date of the Commission's notification, this could occur at any time following certification of the Commission's vote.

If you have any questions regarding the payment of the civil money penalty, please contact Maureen Benitz on our toll free number (800)424-9530 (press 0, then ext. 1660) or (202)694-1660.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read 'Matthew S. Petersen', written over a horizontal line.

Matthew S. Petersen  
Chairman

Attachment

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QUALITY IS OUR PRIORITY FOR LOCKBOX 9058  
SEQ# 001 \$ 0000330000 BA# 1 06-21-10 20 3



FRIENDS OF WALTER BURNETT, JR. <small>CHICAGO, IL 60607</small>		3771 <small>70-0440710 BRANCH 1010</small>
Date <u>6.16.10</u> <		
Pay to <u>Federal Election Commission</u>		\$ <u>3300</u> —
<u>Three thousand three hundred &amp; 00/100</u>		
<b>BANCO POPULAR</b> <small>BANCO POPULAR NORTH AMERICA 140TH CHICAGO AVENUE CHICAGO, IL 60607</small>	<u>C00464511</u>	
FOR <u>AF # 2114</u>	<u>Walter E. S. J.</u>	



FEDERAL ELECTION COMMISSION  
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 2114

DATE SCANNED 7/20/10

SCANNER NO. 2

SCAN OPERATOR SES

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